

time that the oysters were in contact with water or salt water containing less than 0.75 percent salt, after leaving the shucker, was more than 30 minutes.

PLEA: Not guilty.

DISPOSITION: On 11-27-59, the case came on for trial before the court and jury. The trial was concluded on the same day with the return of a verdict of not guilty.

FRUITS AND VEGETABLES*

CANNED FRUIT

26247. Canned peaches. (F.D.C. No. 42687. S. No. 34-941 P.)

QUANTITY: 1,746 cases, 24 1-lb. 14-oz. cans each, at New Cumberland, Pa.

SHIPPED: 10-29-58, from Modesto, Calif., by Robert B. Boyer Co.

LABEL IN PART: (Can) "Frontier Halves Yellow Freestone Peaches."

LIBELED: 2-5-59, M. Dist. Pa.

CHARGE: 402(a)(3)—contained insects, insect parts, fly eggs, and maggots; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 7-24-59. Consent—claimed by Robert B. Boyer Co. Segregated; 220 cases plus 5 cans destroyed.

26248. Canned peaches. (F.D.C. No. 44228. S. No. 96-787 P.)

QUANTITY: 1,100 cases, 24 1-lb. 13-oz. cans each, at Elizabethport, N.J.

SHIPPED: 11-19-59, from Luray, Va., by Moyer Bros.

LABEL IN PART: (Can) "Page Valley Brand Yellow Freestone Peaches Halves in Heavy Syrup Packed by Moyer Bros., Luray, Virginia."

LIBELED: 2-10-60, Dist. N.J.

CHARGE: 403(h)(1)—when shipped, the quality of the article fell below the definition and standard of quality for canned peaches, since all peach units of the article tested in accordance with the method prescribed in such standard were not pierced by a weight of not more than 300 grams; and the weight of the largest unit in some containers was more than twice the weight of the smallest unit therein, and its label failed to bear, as specified by regulations, a statement that it fell below such standard.

DISPOSITION: 3-1-60. Consent—claimed by Clarence M. Moyer, Warren A. Moyer, Winfield L. Moyer, and T. C. Moyer, t/a Moyer Bros., and relabeled.

DRIED FRUIT

26249. Dried currants. (F.D.C. No. 43401. S. No. 52-115 P.)

QUANTITY: 17 30-lb. cases at Moorhead, Minn., in possession of United Supply Co.

SHIPPED: 10-17-58, from Del Rey, Calif.

LIBELED: 7-24-59, Dist. Minn.

CHARGE: 402(a)(3)—contained moldy currants while held for sale.

DISPOSITION: 11-9-59. Default—destruction.

26250. Pitted dates. (F.D.C. No. 43866. S. No. 54-578 P.)

QUANTITY: 18 cases, 48 8-oz. pkgs. each, at Pine Bluff, Ark.

SHIPPED: 9-11-58, from outside the State of Arkansas.

*See also No. 26215.

LIBELED: 12-4-59, E. Dist. Ark.

CHARGE: 402(a) (3)—contained insects while held for sale.

DISPOSITION: 1-20-60. Default—delivered to a charitable institution for use as animal feed.

26251. Apple pomace. (F.D.C. No. 44148. S. No. 69-755 P.)

QUANTITY: 800 50-lb. bags at Gaithersburg, Md.

SHIPPED: 12-9-59, from Fleetwood, Pa., by Berks-Lehigh Cooperative Fruit Growers, Inc.

LABEL IN PART: "Red Creek Brand Apple Pomace * * * Packed by Berks-Lehigh Cooperative Fruit Growers, Inc., 130 East Locust Street, Fleetwood, Pa."

LIBELED: 1-5-60, Dist. Md.

CHARGE: 402(a) (2)—when shipped, the article contained an added poisonous and deleterious substance, DDT, which is unsafe within the meaning of 408 since the quantity of DDT contained on the article was greater than the tolerance fixed for such pesticide chemical on apples.

DISPOSITION: 1-28-60. Default—destruction.

26252. Seedless raisins. (F.D.C. No. 43967. S. No. 90-447 P.)

QUANTITY: 19 30-lb. ctns. at Fall River, Mass.

SHIPPED: 12-24-58, from Clovis, Calif.

LIBELED: 12-14-59, Dist. Mass.

CHARGE: 402(a) (3)—contained insects and mold while held for sale.

DISPOSITION: 1-25-60. Default—destruction.

FROZEN FRUIT

26253. Frozen strawberries. (F.D.C. No. 42238. S. No. 38-419 P.)

QUANTITY: 233 30-lb. tins at Rogers, Ark.

SHIPPED: 5-25-58, from Stilwell, Okla.

RESULTS OF INVESTIGATION: After the article was received by the consignee, the article was packed into 30-lb. cans and placed in storage for freezing.

LIBELED: 10-20-58, W. Dist. Ark.

CHARGE: 402(a) (3)—contained rotten berries while held for sale.

DISPOSITION: The Kelly Canning Co., Prairie Grove, Ark., claimant, filed an answer denying that the article was adulterated as alleged in the libel. The case came on for trial before the court without a jury on 7-1-59, and was concluded on the same day. The case was taken under advisement by the court and on 8-28-59, the following findings of fact and conclusions of law were handed down by the court:

MILLER, District Judge:

FINDINGS OF FACT

1.

"The libeled article of food, consisting of 233 tins labeled in part, 'Grove Brand * * * Whole Blakemore Strawberries Net Weight 30 lbs. Code 5258 Kelly Canning Co., Prairie Grove, Arkansas,' was shipped in interstate commerce on or about May 25, 1958, by the Adair County Commission Company from Stilwell, Oklahoma, to the Kelly Canning Company, Prairie Grove,